

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Fredrick J. Benson,

Petitioner,

v.

William Hutchings,

Respondents.

Case No.: 2:21-cv-01850-APG-BNW

Order to Show Cause

[ECF No. 1-1]

This is a habeas corpus action under 28 U.S.C. § 2254. Petitioner Fredrick Benson has paid the filing fee. I have reviewed the petition under Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. Benson needs to show cause why I should not dismiss this action as an unauthorized second or successive petition.

Benson is challenging his custody under a judgment of conviction of the Eighth Judicial District Court of the State of Nevada, Case No. 00C168372-3. Benson challenged his custody under the same judgment of conviction in *Benson v. Budge*, Case No. 3:05-cv-00464-GMN-VPC, 2015 WL 1442293 (D. Nev. Mar. 30, 2015). The court denied that petition on its merits, and the court of appeals denied a certificate of appealability. Consequently, this petition is a second or successive petition under 28 U.S.C. § 2244(b). Benson must first obtain authorization from the Ninth Circuit before this court can consider his petition. 28 U.S.C. § 2244(b)(3). Nothing in the documents that Benson has filed indicates that he has received such authorization. I have reviewed the on-line docket of the Ninth Circuit. In 2020, Benson applied for authorization to file a second or successive petition, but the Ninth Circuit denied his application. *Benson v. Dzurenda*, Case No. 20-72548. It appears that Benson has not received authorization, and he will need to show cause why I should not dismiss this action.

1 Benson has submitted a motion for appointment of counsel. I deny this motion because it
2 appears that the Ninth Circuit has not yet authorized Benson to proceed with this action. If
3 Benson can show authorization, then he may renew this motion.

4 I THEREFORE ORDER the clerk of the court to file the petition for a writ of habeas
5 corpus and the motion for appointment of counsel, currently in the docket at ECF No. 1-1 and 1-
6 2, respectively.

7 I FURTHER ORDER that the motion for appointment of counsel is **DENIED**.

8 I FURTHER ORDER that Benson will have until **January 31, 2022** to show cause in
9 writing why I should not dismiss this action as an unauthorized second or successive petition.
10 Failure to comply with this order will result in the dismissal of this action.

11 I FURTHER ORDER the clerk to add Aaron Ford, Attorney General for the State of
12 Nevada, as counsel for the respondents.

13 I FURTHER ORDER that the respondents' counsel must enter a notice of appearance by
14 **December 31, 2021**, but no further response will be required from the respondents until further
15 order of the court.

16 I FURTHER ORDER the clerk to provide copies of this order and all prior filings to the
17 Attorney General in a manner consistent with the clerk's current practice, such as regeneration of
18 notices of electronic filing.

19 DATED this 8th day of December, 2021.

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22 ANDREW P. GORDON
23 UNITED STATES DISTRICT JUDGE